

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nicholas Venduras	Team: Squad #8	CCRB Case #: 202004452	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 05/02/2020 10:30 PM, Saturday, 05/02/2020 10:44 PM, Sunday, 05/03/2020 12:01 AM	Location of Incident: East Gun Hill Road, between Rochambeau Avenue and Dekalb Avenue 52nd Pct. Stationhouse	Precinct: 52	18 Mo. SOL 11/2/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 06/20/2020 6:49 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 06/20/2020 6:49 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Lindquist	06307	955068	052 PCT
2. Officers			
3. POM Anthony Digiovanni	26019	968377	052 PCT
4. POM Ariel Guzman	11129	960630	052 PCT
5. POM Steven Torres	19874	962846	052 PCT
6. POM Ariel Eusebio	19648	958565	052 PCT
7. PO Paul White	25819	947872	052 PCT
8. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Hugh Mackenzie	00000	925647	052 PCT
2. POM Shawn Romero	12923	962063	052 PCT
3. POM Robert Glynn	08922	961791	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM James Lindquist	Abuse: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer James Lindquist stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Ariel Guzman	Abuse: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Ariel Guzman stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM James Lindquist	Force: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer James Lindquist used physical force against § 87(2)(b)	
D.POM Ariel Guzman	Force: On May 2, 2020, on East Gun Hill Road and Wayne Avenue Police Officer Ariel Guzman used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
E.POM James Lindquist	Abuse: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer James Lindquist frisked § 87(2)(b) [REDACTED]	[REDACTED]
F.POM Ariel Eusebio	Force: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Ariel Eusebio used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
G.POM Ariel Guzman	Discourtesy: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Ariel Guzman spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
H.PO Paul White	Abuse: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Paul White frisked § 87(2)(b) [REDACTED]	[REDACTED]
I.POM Steven Torres	Abuse: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Steven Torres frisked § 87(2)(b) [REDACTED]	[REDACTED]
J.POM James Lindquist	Abuse: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer James Lindquist frisked § 87(2)(b) [REDACTED]	[REDACTED]
K.POM Steven Torres	Discourtesy: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Steven Torres spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
L.POM Steven Torres	Abuse: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Steven Torres threatened to issue summons to § 87(2)(b) [REDACTED]	[REDACTED]
M.POM James Lindquist	Abuse: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer James Lindquist searched the vehicle in which § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] were occupants.	[REDACTED]
N.POM Ariel Guzman	Abuse: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Ariel Guzman searched the vehicle in which § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] were occupants.	[REDACTED]
O. An officer	Abuse: On May 2, 2020, at the 52nd Precinct stationhouse, an officer threatened to remove § 87(2)(b) [REDACTED] to the hospital.	[REDACTED]
P. An officer	Discourtesy: On May 2, 2020, at the 52nd Precinct stationhouse, an officer spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
Q.POM Anthony Digiovanni	Abuse: On May 3, 2020, at the 52nd Precinct stationhouse, Police Officer Anthony Digiovanni did not process § 87(2)(b) [REDACTED]'s complaint regarding officers.	[REDACTED]
R. Officers	Abuse: On May 3, 2020, at the 52nd Precinct stationhouse, officers did not process § 87(2)(b) [REDACTED]'s complaint regarding officers.	[REDACTED]
S. An officer	Discourtesy: On May 3, 2020, at the 52nd Precinct stationhouse, an officer spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]

## Case Summary

On June 20, 2020, § 87(2)(b) filed this complaint via the CCRB online-website.

On May 2, 2020, at approximately 10:30 PM, Police Officer James Lindquist and his partner Police Officer Ariel Guzman of the 52<sup>nd</sup> Precinct pulled § 87(2)(b)'s vehicle over on East Gun Hill Road near Wayne Avenue in the Bronx after observing him driving dangerously (**Allegations A & B: Abuse of Authority – Vehicle Stop, § 87(2)(g)**). Another civilian, § 87(2)(b) was in the passenger seat of § 87(2)(b)'s vehicle. As the two officers approached his car, § 87(2)(b) got out, shouted at the officers, and did not listen to their commands to get back inside. When § 87(2)(b) ignored PO Lindquist's following command to move to the rear of the vehicle, the two officers tried to move him, resulting in a minor physical struggle (**Allegations C & D: Force, § 87(2)(g)**). As the officers held § 87(2)(b) in place, PO Lindquist briefly frisked him (**Allegation E: Abuse of Authority– Frisk, § 87(2)(g)**).

At the same time, a patrol unit with Police Officer Ariel Eusebio, Police Officer Steven Torres, Police Officer Paul White, and Lieutenant Hugh Mackenzie, also of the 52<sup>nd</sup> Precinct was coincidentally driving by. These officers immediately stopped and ran to assist PO Lindquist and PO Guzman. PO Eusebio ran to where PO Lindquist and PO Guzman were struggling with § 87(2)(b) also using some physical force to gain control and eventually handcuff him (**Allegations F: Force, § 87(2)(g)**). While § 87(2)(b) struggled against the officers, PO Guzman asked what § 87(2)(b) was "fuckin' doing?" (**Allegation G: Discourtesy – Word, § 87(2)(g)**).

At the same time, PO Torres and PO White ran to the passenger side and told § 87(2)(b) to exit the vehicle, both simultaneously frisking him (**Allegations H & I: Abuse of Authority – Frisk, § 87(2)(g)**). After PO Torres frisked § 87(2)(b) he went to join the other officers and stood within a few inches of § 87(2)(b). Shortly after, PO Lindquist also allegedly frisked § 87(2)(b) (**Allegations J: Abuse of Authority – Frisk, § 87(2)(g)**).

With PO Torres standing just behind him at the rear of the vehicle, § 87(2)(b) referenced the Corona virus and intentionally coughed in his face. In response, PO Torres said "that shit...that's a summons." (**Allegation K: Discourtesy – Word, § 87(2)(g) & Allegation L: Abuse of Authority – Threat of Summons, § 87(2)(g)**).

While both § 87(2)(b) and § 87(2)(b) were outside the vehicle, PO Lindquist and PO Guzman searched his vehicle, but did not find anything illegal (**Allegations M & N: Abuse of Authority – Vehicle Search, § 87(2)(g)**).

Once the search was complete, § 87(2)(b) was allowed to walk to his nearby home and § 87(2)(b) was taken back to the 52<sup>nd</sup> Precinct stationhouse. While there, an officer allegedly told § 87(2)(b) if he did not cooperate, he would go to the "crazy home." (**Allegation O: Abuse of Authority – Threat to Remove to the Hospital, § 87(2)(g)**). Before being placed in a cell,

another officer allegedly told § 87(2)(b) to take his “fuckin’ shoes off.” (**Allegation P: Abuse of Authority – Discourtesy – Word, § 87(2)(g)**).

Later, around midnight, § 87(2)(b) was released where he received a summons for § 87(2)(b). As he was leaving the stationhouse, he allegedly encountered Police Officer Anthony Digiovanni and two other unidentified officers. He asked if he could file a complaint against the other officers right then and there, but PO Digiovanni and these officers allegedly discouraged § 87(2)(b) from filing a complaint, told him to leave, and blocked his way back to the stationhouse (**Allegation Q: Abuse of Authority – Refusal to Process Civilian Complaint, § 87(2)(g)**; **Allegation R: Abuse of Authority – Refusal to Process Civilian Complaint, § 87(2)(g)**). While talking to these officers, three other unidentified officers in plain clothes approached and told him he had to leave. § 87(2)(b) insulted one of these officers’ cars and in response he told § 87(2)(b) to ask his mother what type of vehicle he drove (**Allegation S: Discourtesy – Word, § 87(2)(g)**).

The NYPD Legal Department provided 13 Body-Worn Camera (BWC) videos (**Board Review 1**).

### **Findings and Recommendations**

**Allegation A: Abuse of Authority: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer James Lindquist stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation B: Abuse of Authority: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Ariel Guzman stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation C: Force: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer James Lindquist used physical force against § 87(2)(b)**

**Allegation D: Force: On May 2, 2020, on East Gun Hill Road and Wayne Avenue Police Officer Ariel Guzman used physical force against § 87(2)(b)**

**Allegation E: Abuse of Authority: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer James Lindquist frisked § 87(2)(b)**

**Allegation F: Force: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Ariel Eusebio used physical force against § 87(2)(b)**

**Allegation G: Discourtesy: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Ariel Guzman spoke discourteously to § 87(2)(b)**

**Allegation H: Discourtesy: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Steven Torres spoke discourteously to § 87(2)(b)**

**Allegation I: Abuse of Authority: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Steven Torres threatened to issue summons to § 87(2)(b)**

**Allegation M: Abuse of Authority: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer James Lindquist searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation N: Abuse of Authority: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Ariel Guzman searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

On May 2, 2020, at approximately 10:30 PM, § 87(2)(b) was driving home on East Gun Hill Road with § 87(2)(b). The investigation attempted to contact § 87(2)(b) for a statement via telephone and USPS, but the telephone numbers were not associated with him, as per the women who answered, and he did not respond to the letters sent to his address.

§ 87(2)(b) said they has spent two or three hours at another friend's home nearby, but only had one beer several hours earlier and was sober (**Board Review 2**). Additionally, he said he does not allow anyone to smoke in his car, nor had anyone smoked near it at any point leading up to getting inside. On the way to dropping § 87(2)(b) off at home, § 87(2)(b) a car enthusiast, took notice of another Ford Mustang in very good condition. At a stoplight at or near Tyron Avenue, the two Mustangs were next to each other and the two drivers exchanged compliments. A few stoplights later, § 87(2)(b) found himself two or three cars behind this other mustang in the same lane. While waiting, § 87(2)(b) leaned his head out of the driver's window for a few seconds to get a better look at the other Mustang's rims before the light turned green. He said he never took his seatbelt off and kept his body inside his vehicle the entire time.

Both PO Lindquist and PO Guzman stated they pulled § 87(2)(b) over for reckless and dangerous driving on Gun Hill Road near Wayne Avenue when they observed him driving with the top half of his body out of the driver's window (**Board Review 3 & Board Review 4**). PO Lindquist, the vehicle operator, said he observed him driving in and out of traffic like that for one or two blocks (**Board Review 3**). PO Guzman estimated the distance to be about 20 feet, but also said he saw § 87(2)(b) sitting on the sill of the driver's window, screaming loudly at the other Mustang while recording it on his phone for about a minute (**Board Review 4**).

Neither officer's BWC captured § 87(2)(b) driving, but they do show § 87(2)(b) exiting his vehicle almost immediately after stopping. PO Guzman's BWC shows § 87(2)(b) exiting his vehicle at timestamp 0:06 as PO Lindquist approaches him (**Board Review 5**). § 87(2)(b) said he was afraid the situation would escalate if he did anything that could be interpreted as threatening and reasoned if he fully presented himself to the officers, showing his hands, he would demonstrate he was not dangerous (**Board Review 2**).

§ 87(2)(g) PO Lindquist (**Board Review 3**). He told the CCRB this behavior was very unusual and potentially threatening. In his experience, most drivers pull over, roll their window down and wait for him to approach. He did not know § 87(2)(b)'s intentions and considered him to be a possible safety threat for the officers. PO Guzman said § 87(2)(b)'s unusual conduct, complete with loud profane language, caused him to become concerned for their safety as well (**Board Review 4**). In his experience, people generally do not exit their vehicle unless they are armed. PO Guzman was unable to recall exactly what § 87(2)(b) said but remembered lots of cursing. Neither PO Guzman's nor PO Lindquist's BWCs, discussed below,

capture § 87(2)(b) using profanity at the beginning of the interaction, however, there is a brief period without sound due to a 30-second audio recording delay (**Board Review 5 & Board Review 6**).

PO Lindquist, the first officer to approach, said he smelled alcohol and marijuana coming from the vehicle as he got closer which made him suspect § 87(2)(b) may have been under the influence (**Board Review 3**). PO Lindquist said he instructed § 87(2)(b) to get back into his car. § 87(2)(b) told the CCRB he said he would only get back in once he learned why he had been stopped (**Board Review 2**). PO Lindquist said § 87(2)(b)'s apparent high-energy level and his lack of compliance caused him to warn § 87(2)(b) he would be handcuffed (**Board Review 3**). He also told the CCRB since § 87(2)(b) appeared unwilling to get back inside, and since he did not want to push him back in, he decided it would be better to get § 87(2)(b) to the rear of the vehicle. Even though there is no sound, the officers are seen pointing for § 87(2)(b) to get back inside his vehicle for about ten seconds in PO Guzman's BWC until timestamp 0:17, at which point PO Lindquist uses his left hand to turn § 87(2)(b) around and pushes him against the car (**Board Review 5**). PO Lindquist's corresponding BWC shows, at timestamp 0:30, when the sound engages, him telling § 87(2)(b) to relax and get back in the car but § 87(2)(b) remains outside and continues talking for about five seconds before he makes contact with him (**Board Review 6**).

In PO Guzman's BWC, § 87(2)(b) appears to stiffen up and refuses to move as PO Guzman grabs his left arm at timestamp 0:19 (**Board Review 5**). He and PO Lindquist move him back towards the rear of the car a few inches and at timestamp 0:24 PO Lindquist pats over § 87(2)(b)'s jacket pockets. In PO Lindquist's very dark and obscured BWC at timestamp 0:44, which is about the same time as the frisk in PO Guzman's video but with sound, § 87(2)(b) says he does not have anything on him and, "You can check that," to which PO Lindquist responds they do not know that (**Board Review 6**). At timestamp 0:34 of PO Guzman's BWC which has a better angle and sound at that point, § 87(2)(b) says he was only having fun and checking out another Mustang and repeats, "You can check me" (**Board Review 5**). § 87(2)(b) gets out of the vehicle from the passenger seat, but § 87(2)(b) tells him it is not necessary and repeats the officers can check him. PO Guzman also points for § 87(2)(b) to get back in the car. At this point in both in PO Lindquist's and PO Guzman's BWC, the footage does not show exactly what § 87(2)(b) is doing but it appears he does not stand still and speaks while making large gestures with his hands. § 87(2)(b) used such animated gestures, like flinging his arms, and acted so unusual, according to PO Guzman, he too thought § 87(2)(b) might have been intoxicated (**Board Review 4**). On a scale from one to ten in terms of energy level, PO Guzman put § 87(2)(b) at "Twenty."

PO Guzman said after about a minute, the officers attempted to bring § 87(2)(b) to the rear of the vehicle, but he tried to prevent them from doing so by stiffening his arms and legs and a physical struggle began (**Board Review 4**). At that point PO Lindquist said he decided to handcuff § 87(2)(b) because he was tense, loud, angry and struggled against the officers (**Board Review 3**). Additionally, PO Lindquist said he did not want to have to fight § 87(2)(b) and determined handcuffs would bring him into control. As PO Lindquist and PO Guzman attempted to gain

control of § 87(2)(b) an anticrime unit also from the 52<sup>nd</sup> Precinct, consisting of Lt. Mackenzie, PO Eusebio, PO Torres in an unmarked vehicle driven by PO White happened to be driving by.

PO Torres recalled seeing PO Lindquist and PO Guzman struggling with § 87(2)(b) who was flailing his arms and looked as if he was trying to get free of the officers (**Board Review 7**). With no other information about this incident, these MOS immediately stopped and rushed out of the vehicle to assist.

PO Eusebio's BWC shows him exiting from the passenger seat of an unmarked sedan at timestamp 0:21 and jogging over to § 87(2)(b)'s Mustang (**Board Review 8**). Within a few seconds PO Lindquist and PO Guzman move § 87(2)(b) to his trunk while they tell him to relax. § 87(2)(b) loudly asks why he is being arrested, and PO Lindquist tells him he is not. As § 87(2)(b) continues to argue, PO Lindquist, assisted by PO Eusebio and PO Guzman, handcuffs § 87(2)(b). In doing so, § 87(2)(b) ends up bent over his trunk and eventually close to the ground at timestamp 1:02 of PO Eusebio's BWC. At timestamp 1:05, § 87(2)(b) shouts that he is not even resisting, and an officer says, "That's the definition of resisting, bro!" PO Lindquist said it took longer than usual to handcuff § 87(2)(b) because he continued to tense up and flail his arms (**Board Review 3**).

While the officers handcuff him, PO Eusebio's BWC shows § 87(2)(b) repeatedly saying he has not been read his rights and the officers repeat that he should stop struggling and resisting (**Board Review 8**). At timestamp 1:15 PO Guzman asks, "What are you fuckin' doing?" just as they finish handcuffing him. At timestamp 1:50, § 87(2)(b) begins to argue about the Corona virus with PO Lindquist who is almost directly behind him, PO Eusebio is to his left and PO Torres, who had just come from speaking to § 87(2)(b) is to his right. § 87(2)(b) loudly asks what if he has to cough and looks at PO Torres and PO Lindquist says "so cough then" as he walks away towards PO White, PO Guzman and § 87(2)(b) near the passenger seat. § 87(2)(b) waits for a moment and PO Eusebio tells him not to "do it," but § 87(2)(b) then coughs loudly and directly at PO Torres. PO Torres then steps closer and says, "That shit...that's a summons" and could result in another charge. PO Torres said he threatened § 87(2)(b) with a summons because such an action was a health code violation at the time, but he was unsure if it would have been permanent or temporary health code violation, a criminal or an OATH summons (**Board Review 7**).

At timestamp 2:08 of PO Eusebio's BWC, PO Eusebio tells § 87(2)(b) again to stop moving and Lt. Mackenzie asks § 87(2)(b) if he is drunk or high (**Board Review 8**). § 87(2)(b) answers neither, but PO Eusebio says he smells like alcohol.

With § 87(2)(b) handcuffed and § 87(2)(b) now out of the passenger seat, PO Guzman searches § 87(2)(b)'s passenger side beginning at timestamp 3:54 of PO Lindquist's BWC after asking § 87(2)(b) if there is anything illegal in the vehicle (**Board Review 6**). This BWC shows PO Lindquist beginning his search of the driver's side at timestamp 4:06. Both officers said they searched the vehicle based on the smell of marijuana and alcohol and each cited § 87(2)(b)'s apparent consent to search through his repeated statements that they could check him (**Board Review 3 & Board Review 4**). PO Lindquist said neither officer found anything illegal and at one

point, § 87(2)(b) said they had just come from a party which is where PO Lindquist reasoned he might have picked up the smell of marijuana and alcohol (**Board Review 3**).

Both PO Guzman's and PO Lindquist's BWCs show they finish their searches at timestamp 4:55 and timestamp 4:08 respectively (**Board Review 5 & Board Review 6**). At timestamp 5:03, PO Lindquist moves toward the rear of the vehicle where § 87(2)(b) leaning forward against his trunk, says the officers can check his trunk because it only contains a basketball and clothing, but the officers do not (**Board Review 6**). Despite his apparent consent, § 87(2)(b) said he was very upset the officers searched his car because there was nothing inside and it was an invasion of privacy (**Board Review 2**).

During the car search, PO White speaks to § 87(2)(b) and at timestamp 4:45 of PO White's BWC, § 87(2)(b) says they had their cameras out while engaging with the other Mustang (**Board Review 9**). At timestamp 5:14 he says they were "just throwing it on camera" and, "we threw it on camera."

At timestamp 5:33 of PO Lindquist's BWC, he and PO Torres bring § 87(2)(b) to PO Lindquist's vehicle (**Board Review 6**). § 87(2)(b) loudly says he will not get inside, and when PO Lindquist tells him he is under arrest, he asks "for what" repeatedly. He continues to protest and at timestamp 5:59, after officers put him in the SUV, he quickly tries to step out. PO Lindquist pushes him back in and closes the door at timestamp 6:05.

At timestamp 6:17 of PO Torres' BWC, PO Torres, who is near the rear passenger door of PO Lindquist's SUV, shines his flashlight through the window and announces that § 87(2)(b) is on his phone making a call and he and some of the other officers open the doors to stop him (**Board Review 10**). At timestamp 6:50, § 87(2)(b) begins banging something or kicking against the SUV's window causing the officers to tell him to stop and get § 87(2)(b) to try to calm him down. Once officers agree to loosen § 87(2)(b)'s handcuffs at the stationhouse, he seems to calm.

The officers then let § 87(2)(b) walk home, PO Guzman drives § 87(2)(b)'s Mustang back to the stationhouse, and PO Lindquist and PO Eusebio transport § 87(2)(b) via NYPD SUV back to the 52<sup>nd</sup> Precinct stationhouse as shown at timestamp 7:51 in PO Guzman's BWC, timestamp 7:49 in PO White's BWC, and timestamp 8:04 in PO Lindquist's BWC (**Board Review 5, Board Review 8 & Board Review 6**).

Section 4-02(c) of The New York City Department of Transportation's Traffic Rules stated it is prohibited to "operate a vehicle in a manner that will endanger any person or property" (**Board Review 11**). Additionally, the New York State Department of Motor Vehicles prohibits the use of a hand-held mobile telephone or portable electronic device while driving for the purposes of "viewing, taking, or transmitting images" (**Board Review 12**).

§ 87(2)(g)



§ 87(2)(g)

Officers receive force guidelines from Patrol Guide Procedure 221-01 which instructs that “MOS will use only the reasonable force necessary to gain control or custody of a subject,” and tells them to consider “the nature and severity of the crime/circumstances”(Board Review 13). Patrol Guide Procedure 221-02 defines “Active Resisting” as “physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody” (Board Review 14). This procedure instructs officers again to “apply no more than the reasonable force necessary to gain control.”

§ 87(2)(g)

According to Patrol Guide Procedure 200-02, officers must “value human life, respect the dignity of each individual and render [their] services with courtesy and civility.” (Board Review 44)

In DCT Case #79627/04 Assistant Deputy Commissioner of Trial, Robert W. Vinal, ruled, “When a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer’s verbal slip does not rise to the level of actionable misconduct.” (Board Review 15)

§ 87(2)(g)

NYC Health Code 11.31 (a) (2), *Acts Likely to Spread Disease Prohibited* states, “(a) No person shall intentionally or negligently cause or promote the spread of disease: (1) By failure to observe, or by improper observance of, applicable requirements of isolation, quarantine, exclusion, treatment or other preventive measures” (Board Review 16). § 87(2)(g)

§ 87(2)(g)

*People v McLaren*, 131 A.D.3d 548, determined that probable cause exists for the warrantless search of the defendant's vehicle and its occupants due to the “odor of marihuana emanating from a vehicle, when detected by an officer qualified by training and experience to recognize it,” (*People v Cuffie*, 109 AD3d 1200, 1201, 972 NYS2d 383 [2013] [internal quotation marks omitted]; *People v Robinson*, 103 AD3d 421, 959 NYS2d 188 [2013]; *People v Smith*, 66 AD3d 514, 887 NYS2d 562 [2009]). (**Board Review 17**) If PO Lindquist and PO Guzman had a reasonable belief marijuana, which was still illegal at the time, was inside the vehicle, based on what they smelled, *People v McLaren* would have given them a legitimate reason to search the vehicle and frisk the occupants.

§ 87(2)(g)

§ 87(2)(g)

**Allegation H: Abuse of Authority: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Paul White frisked § 87(2)(b)**

**Allegation I: Abuse of Authority: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer Steven Torres frisked § 87(2)(b)**

**Allegation J: Abuse of Authority: On May 2, 2020, on East Gun Hill Road and Wayne Avenue, Police Officer James Lindquist frisked § 87(2)(b)**

At the same time officers struggled with § 87(2)(b) to handcuff him, § 87(2)(b) interacted with PO White and PO Torres initially and later PO Lindquist. PO Torres’ BWC shows him inside the unmarked vehicle until timestamp 0:25, when it stops, and he gets out to jog to the passenger side of § 87(2)(b)’s car (**Board Review 10**). PO Torres stands near the open passenger-side door where § 87(2)(b) is sitting and shines his flashlight at him, saying “Police Department.” He takes hold of § 87(2)(b)’s right forearm and tells him to get out at timestamp 0:40, which he does after about ten seconds. PO White’s BWC shows him right behind PO Torres and at timestamp 0:52 of his BWC, both he and PO Torres frisk § 87(2)(b) briefly but do not find anything (**Board Review 8**). At timestamp 0:58 in his BWC, PO Torres leaves PO White with § 87(2)(b) and goes to the rear of the vehicle to assist the other officers, as described in the section above.

PO Torres said he went to § 87(2)(b) once he saw him in the passenger seat since PO Eusebio ran to help PO Lindquist and PO Guzman (**Board Review 7**). He said he instructed § 87(2)(b) to get out of the vehicle and felt over his clothes out of caution since he had no knowledge of what was happening. He said he did not see any bulges under § 87(2)(b)'s clothes but was unsure what else might be in the car. PO White § 87(2)(b) said he had no recollection of that day in general nor could he recall why he frisked § 87(2)(b) (**Board Review 18**).

When PO Lindquist walks away from § 87(2)(b) after his cough comment at timestamp 2:21 of his BWC, he joins PO White and § 87(2)(b) who is sitting in the passenger seat again (**Board Review 6**). After listening to PO White and § 87(2)(b) talk about § 87(2)(b)'s address and his probation, and PO White indicating he already checked § 87(2)(b) PO Lindquist instructs him out of the vehicle and frisks him again at 4:14, finding nothing. PO Lindquist admitted § 87(2)(b) had remained calm during the entire interaction, exhibiting no threatening behavior, but he did not know who he was or what he might be planning to do, so out of caution he felt over his clothes for weapons (**Board Review 3**). He said it was not unusual for multiple officers to check a civilian for weapons as sometimes officers miss items and PO Lindquist wanted to be thorough.

Patrol Guide 212-11, entitled *Stop Levels* provides officers guidance on frisks. It states a frisk, “a carefully limited running of the hands over the outside of a person's clothing...is authorized when the member of the service reasonably suspects the person is armed and dangerous” (**Board Review 19**).

Additionally, as per *People v. De Bour*, 40 N.Y.2d 210 (1976), states that in order to frisk an individual, an officer must have a reasonable suspicion to believe that the individual is armed, and that if the officer feels an object during the frisk that he believes to be a weapon, he may remove this object (**Board Review 20**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation O: Abuse of Authority: On May 2, 2020, at the 52nd Precinct stationhouse, an officer threatened to remove § 87(2)(b) to the hospital.**

**Allegation P: Discourtesy: On May 2, 2020, at the 52nd Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)**

Upon arrival at the 52nd Precinct stationhouse, according to § 87(2)(b) three or four officers then took hold of his wrists and hands to move him into a holding cell in the back of the stationhouse (**Board Review 2**). Like when he was being taken to the NYPD vehicle, he tried to slow himself by planting his feet and walking slowly while saying he did not want to go into any cells. One officer said that if he did not cooperate, he would go to the “crazy home,” which § 87(2)(b) took to mean a psychiatric hospital.

None of the BWC videos recorded inside the stationhouse show any officer using the term “crazy home” or mentioning a psychiatric ward or hospital. The only time in any BWC videos that a MOS talks about a hospital is captured in Lt. Mackenzie’s BWC on East Gun Hill Road at timestamp 2:54 when he and § 87(2)(b) disagree on the location a nearby hospital and those inside potentially watching the incident (**Board Review 21**). They do not discuss what type of hospital it is and neither Lt. Mackenzie nor any officers threaten to bring him there.

§ 87(2)(b) also said prior to being placed in a cell, an officer instructed him to take his “fuckin’ shoes off,” which he did by sliding out of them. PO Lindquist’s second BWC video recorded § 87(2)(b) being brought to the rear holding cells at timestamp 1:22 (**Board Review 22**). The only discussion of § 87(2)(b)’s shoes begins at timestamp 1:35 when PO Lindquist tells him to take them off about three times and another officer echoes these instructions. They use no profanity and within ten seconds, § 87(2)(b) allows PO Lindquist to slide them off. The only profanity comes from § 87(2)(b) when he says “them shits is fly” at timestamp 1:48.

According to Patrol Guide 221-13, entitled *Mentally Ill or Emotionally Disturbed Persons*, MOS are instructed to take someone into protective custody and remove them to the hospital if necessary if the person “is conducting himself in a manner likely to result in a serious injury to himself or others.” (**Board Review 23**) § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation Q: Abuse of Authority: On May 3, 2020, at the 52nd Precinct stationhouse, Police Officer Anthony Digiovanni did not process § 87(2)(b)'s complaint regarding officers.**  
**Allegation R: Abuse of Authority: On May 3, 2020, at the 52nd Precinct stationhouse, officers did not process § 87(2)(b)'s complaint regarding officers.**  
**Allegation S: Discourtesy: On May 3, 2020, at the 52nd Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)**

§ 87(2)(b) estimated he was released at around 12:00 AM and learned the charges against him were § 87(2)(b), both of which he thinks were unjustified. (**Board Review 2**) The Prisoner Holding Pen Roster shows § 87(2)(b) identified by his summons numbers, § 87(2)(b) and § 87(2)(b) was released at 11:55 PM (**Board Review 24, Board Review 25 & Board Review 26**) Outside, while walking to his car parked out front, he asked three officers he had not seen yet, two White males and an Asian male possibly of Indian heritage, if he was able to file a complaint even if he was just arrested. He said a male officer, whose name on his chest plate was similar to the store-bought frozen pizza brand DiGiorno, later identified as PO DiGiovanni, said that would be fine. However, when § 87(2)(b) asked to confirm if he could go back inside right then, PO DiGiovanni told him it would be pointless because he would be sent right out to talk to those officers again. § 87(2)(b) said he did not believe this seemingly contradictory statement and told PO DiGiovanni he wasn't making any sense, especially since they did not know what officers were involved and did not have any way to look up names or take a complaint. He then told the officers he just wanted to go inside to get names and shield numbers and would not cause any problems, but PO DiGiovanni allegedly said he had been a problem since he arrived. § 87(2)(b) acknowledged he may have been, but he believed he was detained for no reason and wanted to know who was involved. At that point, the officers told him he had to leave and blocked his way back to the stationhouse.

Then, according to § 87(2)(b) two plainclothes female MOS and a plainclothes male MOS, who § 87(2)(b) thought were detectives, approached them. (**Board Review 2**) The male detective told him he had to leave, but § 87(2)(b) said he was only asking for names and shield numbers and had nothing to do with him or these other newly arrived MOS. The plainclothes male allegedly said they had been called to remove § 87(2)(b) from the premises and § 87(2)(b) should leave "before it gets serious." § 87(2)(b) intentionally tried to insult this MOS by saying he was only angry due to his low salary and unimpressive car. This MOS allegedly told § 87(2)(b) to ask his mother what he drove. At that point one of the plainclothes females guided § 87(2)(b) by the elbow away from the stationhouse. She did not hurt him, but he understood that she was telling him to go. Realizing he was not making any progress; he decided to leave and file a complaint another day. He then found his car and drove home.

PO DiGiovanni told the CCRB he was assigned to stationhouse security at that time and would

have been mostly outside the stationhouse, but he had no recollection of § 87(2)(b) even after being shown BWC footage. **(Board Review 27)** He had no recollection of anyone trying to file a complaint or any other officers talking about a loud, insulting and somewhat difficult civilian lodged in the 52nd Precinct’s cells. He had no recollection of physically blocking anyone from going inside the stationhouse and could not recall any civilians engaged with MOS talking about salary or § 87(2)(b)’s mother. § 87(2)(b)’s description of an officer of possible Indian heritage led PO DiGiovanni to identify PO Aminur Rahman, also assigned to the 52nd Precinct, but could not identify any other officers based on § 87(2)(b)’s description. According to roll call and his memo book, PO Rahman was on tour from about 11:15 PM on May 2, 2020, to almost 8:00 AM on May 3, 2020 **(Board Review 24 & Board Review 28)**.

In his statement, PO Rahman stated he had no recollection of § 87(2)(b) even after viewing images of him **(Board Review 29)**. Also, PO Rahman said he did not know who PO DiGiovanni was and did not recall speaking to him. He said immediately after roll call, he and his partner retrieved their equipment and had to respond to an unrelated 911 call just before midnight. They had to leave the stationhouse so early in their tour, they were unable to do their vehicle inspection until they returned after midnight. He said since he and his partner were in such a hurry, they had no time to stop and talk to any other officers such as stationhouse security on their way out. His memo book supports this with an entry at 12:00 AM for a 911 complaint on Bainbridge Avenue and their vehicle inspection at 12:19 **(Board Review 28)**. § 87(2)(g)

Additionally, he had no recollection of hearing about a disruptive civilian or anyone talking about cars, mustangs, or mothers as § 87(2)(b) stated **(Board Review 29)**. He, like the other MOS interviewed, was unable to identify the other officers § 87(2)(b) said came to escort him away based on his descriptions. He also did not know of any other officers fitting his own description for whom he may have been confused.

Patrol Guide 207-31, *Processing Civilian Complaints* says complaints against uniformed members of the service “may be made at any patrol precinct, police service area, transit district, traffic unit, Internal Affairs Bureau, or any other office of the Department, including the Office of the Police Commissioner or office of a deputy commissioner” **(Board Review 30)**.

§ 87(2)(g)

Patrol Guide 203-10, *Public Contact - Prohibited Conduct*, instructs MOS that “using discourteous

or disrespectful remarks regarding another person's ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability” is prohibited (**Board Review 31**).

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- Lieutenant Hugh Mackenzie has been a member of service for 21 years and has been the subject in nine other CCRB complaints and 22 allegations, two of which were substantiated. § 87(2)(g) (Board Review 32).
  - 200505991 involved allegations of Abuse – Question and/or Stop and Abuse of Authority – Search (of person) against Lt. Mackenzie. The Board recommended Instructions and the NYPD imposed Instructions.
- Police Officer James Lindquist has been a member of service for eight years and has been the subject in six other CCRB complaints and 19 allegations, three of which were substantiated. § 87(2)(g) (Board Review 33).
  - 201703383 involved an allegation of Abuse – Question against PO Lindquist. The Board recommended Command Level Instructions and the NYPD imposed Formalized Training.
  - 201907695 involved an allegation Abuse – Vehicle Search. The Board recommended Command Discipline A and the NYPD has yet to impose discipline.
  - 201909958 involved an allegation of Discourtesy – Word. The Board recommended Command Discipline A and the NYPD has yet to impose discipline.
- Police Officer Ariel Guzman has been a member of service for five years and has been the subject in one other case and seven allegations, none of which were substantiated. § 87(2)(g) (Board Review 34).
- Police Officer Ariel Eusebio has been a member of service for six years and has been the subject in nine other CCRB complaints and 39 allegations, two of which were substantiated. § 87(2)(g) (Board Review 35).
  - 201708315 involved an allegation of Abuse – Frisk. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B.
  - 201901922 involved an allegation of Abuse – Entry of Premises. The Board recommend charges and the NYPD has yet to impose discipline.
- Police Officer Paul White has been a member of service for 13 years and has been the subject in nine other cases with 23 allegations, three of which were substantiated. § 87(2)(g)

§ 87(2)(g)

**(Board Review 36).**

- 201502848 involved allegations of Abuse – Search (of person), Abuse – Stop, and Abuse – Threat of Arrest against PO White. The Board Recommended Command Discipline A and the NYPD has yet to impose discipline.
- Police Officer Steven Torres has been a member of service for nine years and has been the subject in eight other cases with 20 allegations, one of which were substantiated. § 87(2)(g)

**(Board Review 37).**

- 201907695 involved allegations of Abuse – Frisk against PO Torres. The Board Recommended Command Discipline A and the NYPD has yet to impose discipline.
- Police Officer Anthony Digiovanni has been a member-of-service for one year and this is the first CCRB complaint to which he has been a subject (**Board Review 38**).
- This is the first complaint to which § 87(2)(b) has been a party (**Board Review 39**).
- This is the first complaint to which § 87(2)(b) has been a party (**Board Review 40**).

**Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- On April 16, 2021, a Notice of Claim inquiry was sent to the NYC Office of the Comptroller. On April 23, 2021, the NYC Office of the Comptroller stated no notices of claim filed by § 87(2)(b) were located for this incident (**Board Review 41**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 8

Investigator: Nicholas Venduras      Inv. Nicholas Venduras      December 22, 2021  
Signature      Print Title & Name      Date

Squad Leader: Ethan De Angelo      IM Ethan De Angelo      December 26, 2021  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date